U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH F. WALSH and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

Docket No. 99-2001; Submitted on the Record;
Issued August 25, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof to establish that he sustained chronic fatigue syndrome and/or fibromyalgia caused or aggravated by factors of his federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On January 30, 1998 appellant, then a 39-year-old mailhandler, filed an occupational disease claim alleging that he sustained "flu-like symptoms with muscle and body aches and pains, along with constant fatigue" due to factors of his federal employment. On the reverse side of the claim form, appellant's supervisor indicated that appellant stopped work on January 9, 1998.[1]

By decision dated August 19, 1998, the Office denied appellant's claim on the grounds that the evidence failed to establish a causal relationship between the claimed condition and factors of employment.

On August 28, 1998 appellant requested reconsideration of his claim, which the Office denied in a merit decision dated November 30, 1998. Appellant again requested reconsideration on February 19, 1999. By decision dated May 24, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial and thus insufficient to warrant review of the prior decision.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof to establish that he sustained chronic fatigue syndrome and/or fibromyalgia caused or aggravated by factors of his federal employment.

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[1] The record indicates that the Office accepted that appellant sustained lumbar strain due to an injury on January 8, 1998.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[2]

In a statement dated March 5, 1998, appellant related that he was diagnosed with chronic fatigue syndrome in December 1996. He indicated that he continued to perform his regular employment duties but that his condition worsened in October 1997. Appellant stated that in December 1997 his physician recommended that he work light duty. He attributed his condition to the following:

> "As for the work-related exposure that has aggravated my illness, any physical activity like lifting, bending, pushing or stooping made me constantly weak with chronic body pain. My duties (or tasks), which included unloading trucks, lifting large sacks of mail, sorting and delivering mail for the [employing establishment clerks], all made my condition worse."

In order to meet his burden of proof, appellant must submit probative medical evidence which establishes a causal relationship between the identified employment factors of lifting, unloading and delivering mail and the diagnosed condition. Upon review of the medical evidence, the Board finds that appellant has not met his burden of proof in establishing causal relationship between the diagnosed conditions of chronic fatigue syndrome and fibromyalgia and factors of his federal employment.

In support of his claim, appellant submitted a form report dated January 26, 1998, from Dr. Harris Ghaus, an internist, who diagnosed chronic fatigue syndrome and checked "yes" that the condition was caused or aggravated by employment. Dr. Ghaus stated, "The employment aggravated [appellant's] condition but did not cause it." The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[3]

[2] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

[3] *Lee R. Haywood*, 48 ECAB 145 (1996).

Appellant submitted several undated, substantially similar reports from his attending physician, Dr. George Cuchural, Jr., a Board-certified internist. In an undated disability summary, Dr. Cuchural related:

> "I am writing on behalf of [appellant], who has CFIDS [chronic fatigue and immune dysfunction syndrome] and has been unable to work. It is my understanding that [appellant] first contracted chronic fatigue syndrome approximately February 1995 following a severe flu[-]like illness. He was first diagnosed with chronic fatigue syndrome at the Boston Veterans Administration hospital [o]n December 13, 1996. His duties at the [employing establishment], which included continuous heavy lifting and bending and stooping as a mail carrier from December 12, 1996 through September, 1997, greatly aggravated his CFIDS condition…."

Dr. Cuchural described appellant's symptoms and noted that repeated laboratory studies did not "reveal a significant abnormality that could explain the persistent and profound fatigue." He indicated that appellant had elevated Epstein-Barr virus titers "consistent with past infection" and that an electroencephalogram revealed findings consistent with chronic fatigue and fibromyalgia. Dr. Cuchural found appellant disabled due to "severe debilitating chronic fatigue syndrome and fibromyalgia." However, Dr. Cuchural's opinion that work aggravated appellant's CFIDS is insufficient to establish appellant's claim as his report is devoid of medical rationale explaining how the identified employment factors contributed to the diagnosed condition.[4] To be of probative value, the physician must provide rationale for the conclusion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[5]

Moreover, the record contains evidence that appellant does not have a condition related to or aggravated by his federal employment. On June 12, 1998 the Office referred appellant to Dr. Hyman Glick, a Board-certified orthopedic surgeon and Dr. Mark Friedman, a Board-certified internist, for a second opinion evaluation.[6] In the combined report dated July 30, 1998, Dr. Friedman discussed appellant's prior medical problems as well as his current complaints and listed findings on examination. He stated:

> "In summary, [appellant] is a 39-year-old male with a history of long-standing symptoms dating back to at least 1992 of a variety of aches and pains, neurocognitive symptoms [etceteras] without any objective findings. He has attributed these to insect bites, Gulf War syndrome and lifting incidents at the [employing establishment]. There is also a history of significant psychiatric symptoms, including auditory hallucinations and a long-standing history of

[4] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

[5] *Jean Culliton*, 47 ECAB 7228 (1996).

[6] The Office referred appellant to Drs. Glick and Friedman as part of the development of appellant's accepted lumbar strain injury of January 8, 1998. In the combined report dated July 30, 1998, Dr. Glick addressed the issue of whether appellant had continued residuals of his January 8, 1998 lumbar strain.

> depression. Most notable is a normal physical examination on repeated occasions and at best nonspecific findings (*e.g.*, crimson crescents). His symptoms and physical examination do not fit the pattern attributed to fibromyalgia and in the presence of a likely major preexisting psychiatric condition (perhaps a major depression or psychosis) the diagnosis of chronic fatigue syndrome cannot be made. In any case, the cause of the chronic fatigue syndrome while attributed by some to possible infectious agents, environmental agents, [etceteras] has not been seriously attributed to lifting incidents and it is quite unlikely that Dr. Cuchural's assertion that lifting at the [employing establishment] precipitated or aggravated [appellant's] alleged chronic fatigue syndrome is supported by any objective literature."

In the conclusion to their July 30, 1998 report, Drs. Glick and Friedman expressed disagreement with appellant's attending physician diagnosing fibromyalgia and chronic fatigue syndrome without ruling out a possible psychiatric disorder. The physicians further stated:

> "It is the judgment of this panel that if he is considered to have fibromyalgia and chronic fatigue syndrome that these conditions are completely unrelated to factors of federal employment in that his regular working duties, as judged by this panel, did not contribute to their initiation or any worsening or aggravation or continuation."

The medical evidence of record does not contain a rationalized opinion, based on a complete and accurate background, sufficient to establish that the implicated factors of appellant's federal employment caused or aggravated either chronic fatigue syndrome or fibromyalgia. Accordingly, appellant has not met his burden of proof and the Office properly denied his claim.

The Board further finds that the Office properly denied appellant's request for reconsideration under section 8128.

Section 10.606 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[7] Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.[8]

In support of his request for reconsideration, appellant submitted a November 30, 1998 decision from the Department of Veterans Affairs increasing his service-connected disability for headaches and a nervous disorder and accepting chronic fatigue syndrome as "directly related to military service." This evidence, however, is not pertinent to the issue of hand, which is whether

[7] 20 C.F.R. § 10.606(b)(2).

[8] 20 C.F.R. § 10.608(b).

appellant developed an occupational disease caused or aggravated by factors of his nonmilitary federal employment. As discussed above, evidence which does not address the particular issue involved is not new and relevant and thus does not constitute a basis for reopening a case.[9]

Abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.[10] Appellant has made no such showing here and thus the Board finds that the Office properly denied his application for reconsideration of his claim.

The decisions of the Office of Workers' Compensation Programs dated May 24, 1999, November 30 and August 19, 1998 are hereby affirmed.

Dated, Washington, D.C.
August 25, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[9] *See Dominic E. Coppo*, 44 ECAB 484 (1993).

[10] *Rebel L. Cantrell*, 44 ECAB 660 (1993).